



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

November 3, 2011

Elena Miller
State Oil and Gas Supervisor
Department of Conservation
Division of Oil, Gas and Geothermal Resources
801 K Street, MS 20-20
Sacramento, CA 95814-3530

Dear Ms. Miller:

I am writing to request clarification on an issue that has come to EPA's attention regarding the State of California's Class II Underground Injection Control (UIC) Program. Specifically, a question has arisen as to whether the Class II Program administered by the California Division of Oil, Gas, and Geothermal Resources (DOGGR) has sufficient legal authority to issue UIC permits for produced gas reinjection, an activity that EPA's regulations categorize as Class II injection. With this letter, I am seeking formal clarification of DOGGR's legal authority with respect to produced gas reinjection, or the authority of any other State agency in California to authorize such injection.

Based on recent communication between our agencies, as well as between EPA and several oil industry representatives, we are aware that DOGGR is no longer processing new applications for produced gas reinjection wells, nor authorizing modifications to existing wells. It is our understanding that DOGGR does not believe existing State regulations authorize the permitting of this type of injection.

Under EPA's UIC regulations, Class II injection wells include those which inject fluids "which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production." See 40 CFR section 144.6(b)(1). Further, section 144.3 of the UIC regulations defines "fluid" for the purposes of these regulations as "any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state." Thus, produced gas reinjection is considered a Class II UIC activity. DOGGR, as the Class II primacy agency in California, should have authority to issue permits for this type of injection.

When DOGGR first sought primacy for the Class II UIC Program, the California Deputy Attorney General, as part of the primacy package, submitted letters to the EPA Administrator (April 1, 1981) and to EPA Region IX (December 3, 1982) stating that the laws of the State provide adequate authority to carry out the Class II UIC Program. EPA relied upon these letters when it approved California's Class II UIC program, as codified at 40 CFR Part 147.250. In order to determine whether California's Class II UIC program, as codified at 40 CFR Part 147.250, warrants revision, we are requesting that you submit a supplemental Attorney General's

statement clarifying California state law on whether and to what extent DOGGR or any other State agency has the authority to issue permits for the injection of produced gas as part of the State's Class II UIC program. This statement should include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions, which demonstrate the basis and extent of such authority. This letter will enable EPA to determine whether the California's Class II UIC program, as codified at 40 CFR Part 147.250, will need revision.

Please note that although EPA granted Class II UIC primacy to DOGGR, it is possible for the State to seek approval to transfer part of the Class II UIC Program to another State agency. Thus, if an agency other than DOGGR has the requisite legal authority to issue permits authorizing produced gas reinjection, the State could request EPA's approval of a partial program transfer. In such instances, "States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved." In addition, the new agency is not authorized to administer the program until approved by EPA. See 40 CFR section 145.32(c).

In the event that the State does not have adequate legal authority to permit the reinjection of produced gas, EPA would consider this a deficiency in DOGGR's Class II UIC Program that requires resolution. In addition, a finding of insufficient legal authority would impact the more than 100 Class II produced gas injection wells currently operating in accordance with DOGGR-issued UIC permits. In consideration of the substantial disruption that might otherwise result from this situation, EPA is willing to work closely with the State and the affected operators to develop a transition strategy, if this becomes necessary.

To expedite resolution of this matter, I request a written response within 45 days of your receipt of this letter. If you have any questions, please feel free to contact me at 415.972.3971.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Albright', is written over a horizontal line.

David Albright, Manager
Ground Water Office

cc: Ann Codrington, US EPA Drinking Water Protection Division